

Real estate withholding laws expanded to include residents

Starting in January, people buying California real estate must withhold 3 1/3 percent of the sales price and send it to the Franchise Tax Board.

For real estate sales closing after December 31, 2002, the new law, Assembly Bill 2065, requires buyers of California real estate to withhold income taxes and send them to us.

The penalty for not complying is the greater of \$500 or 10 percent of the withholding amount.

There are some exceptions in the law. Withholding is not required if the total sales price is \$100,000 or less, or for principal residences, sales resulting in a

taxable loss, like kind exchanges, and some involuntary conversions. Also exempted are sales where the seller is tax exempt or a California corporation or partnership.

Current real estate withholding laws only apply to sales by nonresident sellers of California real estate. The new law expands to include all individuals--residents and nonresidents. Unlike the current law, we will not grant individuals a waiver or reduced rate of withholding for sales with small taxable gains.

Tax withholding is a prepayment of state taxes that sellers who profit from their real estate sales will owe.

New real estate tax withholding law also affects waivers and reduced rates

Assembly Bill 2065 expands tax withholding to all individuals who sell California real property, including California resident individuals.

The law does not provide waivers or reduced rate of withholding for sales with small taxable gains. Nor does the law grant a reduced rate of withholding or waiver when the estimated California income tax is significantly less than the statutory withholding amount.

Look for new forms and an updated FTB Publication 1016, *Real Estate Withholding Guidelines*, on our Website in early January 2003.

Who is subject to the withholding? What are the exceptions? What if there are multiple sellers? For answers to these and other pertinent questions, see our *Real Estate Withholding Guide* starting on page 10.

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Tax News

Volume 00-6 November/December 2002

TAX NEWS is a bimonthly publication of the Communications Services Bureau, California Franchise Tax Board. Its primary objective is to provide information to income tax practitioners about state income tax laws, regulations, policies and procedures.

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FTB to host forum on AB 1115

There are major changes in store for nonresidents, part-year residents, and former nonresidents in taxable year 2002, many resulting from California Assembly Bill 1115.

Learn the ins and outs of this important law by attending our special **Franchise Tax Board AB 1115 Forum** on December 6, 2002, at our main facility, 9646 Butterfield Way, Sacramento CA.

The forum is free. Come ask questions and participate in discussions about the new law. We'll provide information about what the law means for nonresidents, part-year residents, and former nonresidents, and we'll explain how we plan to administer the new law. We'll also give out copies of our yet to be released FTB Pub.1100, *Guidelines of Nonresidents and Individuals Who Change Residency*.

The AB 1115 forum will be an interactive event, so we need your input. Send us an email now at taxpayer_advocate@ftb.ca.gov, to reserve your spot and/or to send us your questions about the new law. We'll be sure to address them at the forum.

Two sessions are scheduled. The morning session runs from 9 am until noon. The afternoon session runs from 1 pm until 4 pm. Choose the one that best suits your needs.

Include your name, telephone number, number of people in your group, which session you want to attend, and your questions.

You can also call the taxpayer advocate for reservations at (916) 845-5249 or send a fax with your information to (916) 845-6614. Include your fax number so we can confirm your reservation.

FTB adopts information privacy principles

Today, people are concerned about their privacy as the amount of personal information gathered and used by businesses and government increases. To deal with that concern, we created our *Information Privacy Principles for Individuals*.

These principles are based on the *California Information Practices Act*, and show our commitment to protect personal tax information and to use that information responsibly. In general, the eight Principles state that:

- 1 We gather personal information only if it is relevant and necessary for us to accomplish our mission. We use personal information in a responsible and lawful manner.
- 2 We share personal information only when we have legal authority to do so.
- 3 We retain personal information only as long as necessary to fulfill established business needs for that information.

- 4 We have appropriate and reasonable safeguards to ensure the security and confidentiality of personal information.
- 5 Individuals have the right to know what types of personal information we gather and use.
- 6 Individuals have the right to inspect the personal information we maintain about them and to request that we correct errors.
- 7 Individuals have a right to be heard if they believe we failed to adhere to our *Information Privacy Principles for Individuals*.
- 8 We periodically have outside privacy experts review our practices to ensure that we follow our *Information Privacy Principles for Individuals*.

There is more information about each information privacy principle on our Website. Log on to www.ftb.ca.gov/privacy to view our *Information Privacy Principles for Individuals* in their entirety.

New law improves tax relief chances for innocent spouses

Beginning January 1, 2003, it will be easier for taxpayers going through divorce proceedings to resolve their California tax liabilities as part of their marriage dissolution process.

With the enactment of Assembly Bill 2979, California now has greater flexibility in granting relief to qualified innocent spouses.

AB 2979 increases the joint income and liability thresholds that in the past prevented many taxpayers from qualifying for relief. Under the existing law, if the joint gross income reported on the tax return exceeds \$50,000 or the joint liability exceeds \$2,500 the taxpayer is required to obtain a *Tax Revision Clearance Certificate*, file it with the court as part of the divorce decree/settlement agreement and send a copy to us in order to complete the request for relief of the joint tax liability.

Effective January 2003, for court-ordered divorce decrees issued by the court after January 1, 2003, the thresholds increase to \$150,000 and \$7,500, respectively. This will allow more than 60 percent of potential innocent spouse candidates to qualify for relief without the additional burden of having to request a *Tax Revision Clearance Certificate*, and, it allows us to provide them with a more expedient resolution.

The new law adds flexibility to a program that has already made steady progress in the area of granting relief to qualified innocent spouses. For example, we currently are able to separate joint tax liabilities, pursuant to a court-ordered divorce decree, provided the decree conforms to the requirements outlined in Revenue and Taxation Code Section 19006(b).

The decree:

- Must specify the tax year(s) for which relief is being requested.
- Must specifically refer to the California state personal income tax liability.
- Must identify which spouse is responsible for the tax liability, and whether the other (requesting) spouse remains liable for a percentage of the tax, penalties and interest.

(Note: By contrast, currently, the Internal Revenue Code does not contain provisions allowing the Internal Revenue Service to separate liabilities pursuant to a court order.)

Here are some other changes to look for in 2003:

Innocent Spouse Program Webpage

Look for our new Innocent Spouse Webpage, scheduled to debut in early 2003. There you'll be able to find out if your clients qualify for relief under the new law and what steps they'll need to take to request relief.

Application for relief

To make it easier to request relief, we've redesigned our relief request application into a one-page form, which you and your clients will be able to download from our Webpage.

Contact us

Call us at (916) 845-7072 if you have questions about the new law or our Innocent Spouse Program. Better yet, why not request a presentation from us? It's great way to learn the ins and outs of our new program. To schedule a speaker for your organization, please call Christopher Hicks at (916) 845-6354 or send an email to christopher.hicks@ftb.ca.gov.

Ask the Advocate



Debbie Newcomb
Taxpayer
Advocate

Dear readers:

In May, with the enactment of Assembly Bill 1122 (Stats. 2002, Chapt. 35) and Senate Bill 657 (Stats. 2002, Chapt. 34), the California Legislature passed an omnibus federal conformity package retroactive to January 1, 2002.

The new law also specifies that California no longer allows a federal S corporation to elect to be a California C corporation. For taxable years beginning on or after January 1, 2002, all corporations with a valid federal S election are also an S corporation under California law. For taxable years beginning on or after January 1, 2002, corporations that have S corporation status for federal purposes will be treated as an S corporation for California purposes.

Many of you have contacted us to discuss how the new law will affect the way you prepare your clients' returns.

Here are answers to some frequently asked questions:

Q: My client is a federal S corporation but previously elected C corporation treatment for California tax purposes.

Do I have to notify you we are now changing the California filing

Continued on page 4

Free e-file program now performs math, figures tax

We recently deployed to our Website our new, free, *540 2EZ Direct* filing system, complete with math calculator and tax look-up features. Look for it on our Website, www.ftb.ca.gov, in January 2003.

The 2EZ Direct service is aimed at the more than 4.3 million taxpayers with uncomplicated tax scenarios who can prepare their own returns.

The benefits of this e-file service include automatic math calculation,

quick refunds-- within five to seven days, direct e-filing without going through a third party, confirmation that we received the tax return, and, it's free.

The 540 2EZ, created by State Controller and Franchise Tax Board Chair Kathleen Connell in 1999, is the state's simplest and shortest tax form.

The electronic version can be completed within 15 minutes, while the postcard-sized paper version has gained wide appeal for its simplicity in reducing the

required lines of tax information needed and eliminating several math calculations.

It is available to single taxpayers earning \$50,000 or less and married taxpayers earning \$100,000 or less who do not itemize deductions and have three or fewer dependents.

The three-member Franchise Tax Board unanimously authorized development of the new functionality at its meeting October 1, 2002.

Ask the Advocate

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status to S corporation?

A: No. For taxable years beginning on or after January 1, 2002, all corporations with a valid federal S election are also an S corporation for California tax purposes. When you file, use the California S Corporation form. (Form FTB 100S).

Q: My client is a federal S corporation with a fiscal year end who previously elected C corporation treatment for California tax purposes. Do we have to file two short year returns in order to comply with this requirement?

A: No, there is no requirement to file a short year return due to the law change. For example, a federal S corporation which previously elected treatment as a California C corporation having a taxable year ending September 30, 2002, needs to start filing the California S corporation return for the taxable year beginning October 1, 2002, and all subsequent taxable years.

Q: I have a client who is a federal S corporation, but previously elected

treatment as a C corporation for California purposes. I made my client's first two corporation estimated payments on April 15, 2002 and June 15, 2002. Due to the new law changes, for taxable year 2002, my corporation is now a California S corporation and each S corporation shareholder needs to pay more estimated tax in the first two installments. In addition, I have overpaid the corporate estimated tax payments since the S corporation is only taxed at 1.5 percent instead of at 8.84 percent. Is my client eligible for a refund in order to pay additional personal estimated tax payments?

A: No. But the change in law included a provision that allows a transfer of estimated tax payments from the S corporation to the shareholders. Revenue and Taxation Code Section 19365 allows the overpayment of the S corporation estimated tax to be transferred to the shareholders' accounts, prior to the filing of the corporation's return.

Transfers are allowed for S corporations with a taxable year beginning in 2002, and only if the total transfer amount is at least \$500. Form FTB 3833, *Application for Transfer of*

S Corporation 2002 Overpayments to Shareholders, allows the corporation to authorize us to transfer the overpaid portion of the corporation estimated tax payments to the individual shareholders' accounts.

We will treat the shareholders as if they paid the transferred estimated payment amounts on the same date the corporation made the estimated payments. For more information, see form FTB 3833.

Q: Does the underpayment of estimated tax penalty apply in situations where the estimate payment was transferred from the corporation account to the shareholder account?

A: No, for the 2002 taxable year only, no addition to tax shall apply with respect to any underpayment of estimated tax to the extent the underpayment of an installment was created or increased by any provisions of law enacted or amended by an act chaptered during the 2002 calendar year.

To request a waiver of underpayment of estimated tax penalty, see form FTB 5806, *Underpayment of Estimated Tax by Corporations*.

Laws and Legislation

Summary of legislation signed into law in 2002

Several legislative measures affecting the Franchise Tax Board were signed into law. We've summarized them below. These are only summaries. If you want to learn more about a legislative measure you read about here, go to our *Law and Legislation* Webpage located on our Website, www.ftb.ca.gov. You can also find comprehensive information about all legislative measures on the Internet at www.leginfo.ca.gov, the *Official California Legislation Information Website*.

Franchise Tax Board sponsored legislation

AB 2963 (Aroner) Chapt. 757

This act allows unmarried parents the same eligibility for the California Child and Dependent Care Refundable Credit as divorced or separated parents.

AB 2979 (AR&T Committee) Chapt. 374
This act:

- 1 Amends the Government Code to delete an obsolete reference.
- 2 Addresses an administrative problem in the processing of the Child and Dependent Care Credit.
- 3 Conforms state law to federal law regarding certain penalties.
- 4 Makes nonsubstantive, technical changes to the Senior Citizens Homeowners and Renters Property Tax Assistance Laws.
- 5 Provides specific sourcing rules for the other state tax credit.
- 6 Increases the gross income and state income tax liabilities that would qualify for judicial relief of joint and several tax liabilities and inform the parties to a divorce proceeding of existing tax laws regarding divorce court orders.

SB 1445 (Alpert) Chapt. 258

This act makes two enhancements to our authority to settle civil tax disputes to allow:

- 1 the Executive Officer and Chief Counsel to approve any settlement up to \$7,500 and index that amount in future years to reflect inflation, and
- 2 tax years to be completely resolved through a settlement agreement.

SB 1660 (Scott) Chapt. 487

This act contains provisions, sponsored by the Franchise Tax Board, to:

- 1 correct an erroneous reference in the Joint Strike Fighter Credit and,
- 2 repeal obsolete language with respect to original issue discount treatment.

This act also contains provisions to:

- 3 add definitions to the Solar Energy System Credit, and
- 4 eliminate the sunset date for the court-ordered debt collection program (note: this provision was chaptered out by AB 2388).

SB 1875 (Karnette) Chapt. 399

This act changes the documentation requirements for filing a claim under the Senior Citizens Homeowners and Renters Property Tax Assistance Law by eliminating a statutory requirement that claimants attach a copy of their annual property tax statement to their claim.

SB 2051 (Bowen) Chapt. 694

This act:

- expresses the Legislature's intent that we implement the current law that allows us to provide city tax officials with tax return information, and

- prohibits taxpayers from amending their income tax returns using the Information Practices Act of 1977.

Budget trailer legislation

AB 1768 (Oropeza) Chapt. 1127

This act changes the rate of interest for overpayments of income tax by corporate taxpayers.

AB 2065 (Nakano) Chapt. 488

This act:

- 1 Suspends the Teacher Retention Credit for one year.
- 2 Suspends the deduction for net operating losses for two years, then makes the NOL deduction 100 percent.
- 3 Extends withholding on real property sales to residents.
- 4 Increases withholding on stock options and bonus payments from 6 to 9.3 percent.
- 5 Institutes special collection procedures to pursue high-risk collections.
- 6 Conforms to federal bad debt deduction rules for banks.
- 7 Provides penalty relief for underpayments caused by tax changes enacted during the 2002 calendar year.

AB 3000 (Assembly Budget Committee) Chapt. 1124

This act requires state agencies to conduct a survey and develop an implementation plan concerning bilingual services.

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Laws and Legislation

Summary of legislation signed into law in 2002

Budget trailer legislation

Continued from page 5

AB 3009 (Assembly Budget Committee) Chapt. 1033

This act suspends the allocation of the Natural Heritage Preservation Tax Credit

Conformity

between July 1, 2002, and June 30, 2003.

AB 131 (Corbett) Chapt. 30

This act allows public employees to roll over Internal Revenue Code (IRC) Section 457 deferred compensation plan proceeds and to purchase service

credits with IRC Section 457 deferred compensation plan proceeds.

AB 1122 (Corbett) Chapt. 35 and SB 657 (Scott) Chapt. 34

These acts conform state law to federal treatment of the:

- 1 Pension plan, Coverdell Education Saving Account, and Qualified Tuition Plan changes contained in the federal Economic Growth and Tax

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Interest Rates

For the period of January 1, 2003, through June 30, 2003, the adjusted interest rate on underpayments and overpayments of California **personal income taxes** will be **six percent**. Effective July 1, 2002, through December 31, 2002, the interest on **corporation overpayments** is **two percent**.

Assembly Bills 1768 and 3000, enacted September 30, 2002, modified Revenue and Taxation Code Section 19521(a)(1)(C) to stipulate that the interest on corporate overpayments for periods beginning July 2002 to be the lesser of five percent or the bond equivalent rate of 13 week United States Treasury Bills. The bond equivalent rate is currently two percent.

Effective Date	Rate	Effective Date	Rate	Effective Date	Rate
1 Jan. 1992 to 30 June 1992	10%	1 Jan. 1996 to 30 June 1996	9%	1 Jan. 2000 to 30 June 2000	8%
1 July 1992 to 31 Dec. 1992	9%	1 July 1996 to 31 Dec. 1996	9%	1 July 2000 to 31 Dec. 2000	8%
1 Jan. 1993 to 30 June 1993	8%	1 Jan. 1997 to 30 June 1997	9%	1 Jan. 2001 to 30 June 2001	9%
1 July 1993 to 31 Dec. 1993	7%	1 July 1997 to 31 Dec. 1997	9%	1 July 2001 to 31 Dec. 2001	9%
1 Jan. 1994 to 30 June 1994	7%	1 Jan. 1998 to 30 June 1998	9%	1 Jan 2002 to 30 June 2002	7%
1 July 1994 to 1 Dec. 1994	7%	1 July 1998 to 31 Dec. 1998	9%	1 July 2002 to 31 Dec. 2002	6%
1 Jan. 1995 to 30 June 1995	8%	1 Jan. 1999 to 30 June 1999	8%	1 Jan. 2003 to 30 June 2003	6%
1 July 1995 to 31 Dec. 1995	9%	1 July 1999 to 31 Dec. 1999	7%		

Laws and Legislation

Summary of legislation signed into law in 2002

Conformity

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- Relief Reconciliation Act of 2001 (P.L. 107-16).
- 2 Contributions of publicly traded stock to private foundations.
- 3 Gifts of appreciated property for alternative minimum tax purposes.
- 4 Federal S corporation election, requiring corporations with a valid S election for federal law to be an S corporation for California law.
- 5 Discharge of indebtedness of an S corporation.
- 6 Deduction of club dues.
- 7 Deduction of excess compensation for officers.
- 8 Disallowance of lobbying and political expenses.
- 9 Estimated tax payments of individuals.
- 10 Numerous federal changes made between January 1, 1998, and January 1, 2001.

SB 219 (Senate Revenue & Taxation Committee) Chapt. 807

This act conforms state law to specified sections of the federal Victims of Terrorism Tax Relief Act of 2001 to do the following:

- exempt items from income for certain disasters or acts of terrorism,
- extend certain taxpayer deadlines, and
- allow disclosure of certain taxpayer information to federal agencies.

This act also:

- adopts the federal employer-provided adoption assistance income exclusion;
- extends the time a “financially disabled” taxpayer has to file for an income tax refund;

- adopts certain federal scholarship and fellowship income exclusions;
- corrects AB 1122’s (Stats. 2002, Chapt. 35) inadvertent failure to conform to installment sale pledge rules;
- makes several technical non-substantive corrections to AB 1122; and
- permits a 100 percent shareholder of an S corporation to file a group return.

SB 1724 (Speier) Chapt. 824

This act conforms the California Child and Dependent Care credit to the recent changes made to the federal Child and Dependent Care Expenses credit.

State agencies

AB 700 (Simitian) Chapt. 1054

This act requires a state agency to notify a resident of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency’s computer system.

AB 1857 (Wayne) Chapt. 389

This act increases the amount of information that a state agency must place on its Website when proposing a regulation.

AB 2072 (Mountjoy) Chapt. 1113

This act allows a state body to hold closed session meetings to discuss threats or potential threats of criminal or terrorist activity.

AB 3035 (Judiciary Committee)

Chapt. 300

This act requires that:

- any open, public meeting of a state body must be held in accordance with the Americans with Disabilities Act .
- the state body meetings must comply with the ADA related federal rules and regulations.
- a meeting notice be made available in appropriate alternative formats, upon request of a person with a disability.
- the writings made available for public inspection be made available in appropriate alternative formats upon request of a person with a disability.

SB 1386 (Peace) Chapt. 915

This act requires a state agency to notify a resident of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency’s computer system.

Disclosure

AB 1752 (Migden) Chapt. 156

This act requires the Board of Equalization to make additional disclosures of public non-taxpayer records before taking final action on the item at its public meetings.

Business Entities

AB 1875 (Correa & Nakano) Chapt. 390

This act allows certain corporations to dissolve without obtaining a tax clearance certificate.

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Laws and Legislation

Summary of legislation signed into law in 2002

Business Entities

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AB 2791 (Migden) Chapt. 169

This act requires that:

- the Secretary of State notify certain business entities about the obligation to pay an annual tax at the time the entity is created or registered in this state, and
- we notify certain business entities about the obligation to pay an annual tax until the existence of the business entity is properly ended or the business entity's registration is properly cancelled.

SB 399 (Ackerman) Chapt. 480

This act establishes procedures for the conversion of corporations into limited liability companies (LLC), limited partnerships (LP), or general partnerships. This act also establishes procedures for the formation of a corporation from the conversion of an LLC, an LP, or a general partnership.

Voluntary contributions

AB 957 (Papan) Chapt. 135

This act grammatically restructures the current appropriation language in the Lupus Foundation of America voluntary contribution, but does not change current law.

AB 2036 (Liu) Chapt. 647

This act reestablishes the voluntary contribution to support programs to prevent child abuse and neglect.

AB 2127 (Matthews) Chapt. 620

This act reestablishes the voluntary contribution to benefit asthma and lung disease research.

AB 2783 (Strom-Martin) Chapt. 594

This act reestablishes the voluntary contribution for the Rare and Endangered Species Preservation Program.

SB 1365 (Speier) Chapt. 484

This act:

- maintains the California Breast Cancer Research Fund voluntary contribution for another five years; and
- allows the University of California to use a portion of the fund to administer and market the Breast Cancer Research Program.

Exclusion from income

AB 989 (Chan) Chapt. 701

This act excludes from gross income Holocaust restitution payments received by an individual or the individual's heir or estate.

AB 1968 (Nation) Chapt. 843

This act expressly excludes from gross income any type of rebate, voucher, or other financial incentive received for the purchase or installation of an energy-producing system.

SB 1977 (Johannessen) Chapt. 1108

This act exempts from taxation any gain related to the transfer of assets from a mutual water company formed prior to September 26, 1977, to a community services district, a public agency.

Economic development

AB 2875 (Vargas) Chapt. 692

This act changes the method of determining the designation period for all local agency military base recovery areas.

Military

AB 1433 (Horton) Chapt. 60

This act provides various civil protections and relief to military service members who are ordered to active federal or state military duty.

Miscellaneous

AB 1408 (Hollingsworth) Chapt. 524

This act requires us to enter into an interagency agreement with the California Department of Food and Agriculture securing certain information related to net operating loss deductions for Pierce's disease claimed by noncorporate farmers.

AB 2388 (La Suer) Chapt. 776

This act extends the sunset date of our court ordered debt collection program.

SB 1467 (Bowen) Chapt. 1122

The act expands the conflict of interest provisions that currently apply to certain state purchases to data processing, telecommunications, and other information technology contracts.

SB 1955 (Figueroa) Chapt. 1150

This act, among other things,

- allows us to notify the California Tax Education Council (CTEC) when it encounters Tax Preparers who are not properly registered, and
- requires CTEC to notify the Attorney General, a district attorney, or a city attorney of the Tax Preparers that are not properly registered.

SB 1961 (Polanco) Chapt. 981

This act expresses the Legislature's intent that we will implement the current law that allows us to provide city tax officials with tax return information.

Tax Practitioner Services

Tax Practitioner Hotline

Telephone 916.845.7057

Fax 916.845.6377

Personal Income Tax Collection

Fax 916.845.0494

Business Entities Collection

Fax 916.845.0145

FTB e-file Help Desk

Telephone 916.845.0353

The Tax Practitioner Hotline hours are as follows:

Monday through Friday:
8 am to 5 pm

The hotline will not be open on Saturdays and state holidays.

Here are the state holidays we will observe in 2003:

- **Wednesday, January 1, 2003**
New Year's Day
- **Monday, January 20, 2003**
Martin Luther King, Jr. Day
- **Wednesday, February 12, 2003**
Lincoln's Birthday
- **Monday, February 17, 2003**
Washington's Birthday
- **Monday, March 31, 2003**
Cesar Chavez Day
- **Monday, May 26, 2003**
Memorial Day
- **Friday, July 4, 2003**
Independence Day
- **Monday, September 1, 2003**
Labor Day
- **Monday, October 13, 2003**
Columbus Day
- **Tuesday, November 11, 2003**
Veterans' Day
- **Thursday, November 27, 2003**
Thanksgiving Day
- **Friday, November 28, 2003**
Day after Thanksgiving
- **Thursday, December 25, 2003**
Christmas Day

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- Mail the order form and your check or money order to:

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Real estate withholding guide

For escrows closing on or before December 31, 2002, the following guidelines apply:

Sellers subject to withholding

- Individuals with a last known street address outside of California (nonresidents), and
- Non-individuals (corporations, estates, trusts, etc.) with a last known street address outside of California.

Rate

The withholding rate is 3 1/3 percent of the total sales price.

Threshold

Withholding is only required if the total sales price exceeds \$100,000.

Certifiable exceptions

Individuals

No withholding is required if an individual seller:

- is a resident of California, or
- is selling a principal residence.

Non-individuals

No withholding is required if a non-individual seller is:

- A corporation with a permanent place of business in California,
- A partnership or LLC,
- A tax exempt entity, insurance company, IRA, or qualified pension plan,
- An irrevocable trust with California trustee,
- An estate with California decedent, or
- A bank or bank acting as fiduciary for a trust.

Waivers and reduced withholding

Individuals

Individuals can request a waiver or reduced amount of withholding when there is little or no gain on the sale or the estimated California income tax is significantly less than the statutory withholding amount.

Non-individuals

Non-individuals can request a waiver or reduced amount of withholding when there is little or no gain on the sale or the estimated California income tax is significantly less than the statutory withholding amount.

Multiple sellers

If there are multiple sellers only some of which are nonresident individuals or non-individuals, you must withhold on the total sales price even though the nonresident(s) only own a portion of the property. However, the nonresident individual or non-individual may request a reduced withholding amount.

Loss on sale

Individuals

Individuals can request a waiver if the sale will result in a loss.

Non-individuals

Non-individuals can request a waiver if the sale will result in a loss.

Small gain

Individuals

Individuals can request a waiver or reduced amount of withholding if the gain on the sale will result in significantly less California income tax than the statutory withholding amount.

Non-individuals

Non-individuals can request a waiver or reduced amount of withholding if the gain on the sale will result in significantly less California income tax than the statutory withholding amount.

Exchanges

If the sale is part of an Internal Revenue Code Section 1031 exchange, the seller may request a waiver of withholding from the Franchise Tax Board. Any boot received by the seller is subject to withholding.

Due dates

Withholding must be sent to us by the 20th day of the month following the month escrow closes.

Forms

- Form 597, *Nonresident Withholding Tax Statement for Real Estate Sales*
- Form 597-E, *Nonresident Withholding Exchange Affidavit*
- Form 597-I, *Nonresident Withholding Installment Sale Agreement*
- Form 597-W, *Withholding Exemption Certificate and Nonresident Waiver Request for Real Estate Sales*

Continued on page 11

For escrows closing on or after January 1, 2003 the following guidelines apply:

Continued from page 10

Sellers subject to withholding

The new law expands real estate withholding to include all individuals (residents and nonresidents). It continues to apply to non-individuals with a last known street address outside California.

Rate

Same as for escrows closing on or before December 31, 2002.

Threshold

Same as for escrows closing on or before December 31, 2002

Certifiable exceptions

Individuals

Individuals will no longer have an exemption for being a resident. However, individuals can be exempt from withholding if they certify that they are:

- Selling the property for \$100,000 or less,
- Selling their principal residence,
- Selling the property at a loss for California income tax purposes,
- Selling the property as part of an Internal Revenue Code Section 1031 exchange, or
- Selling the property because of an involuntary conversion and will replace the property within the provisions of Internal Revenue Code Section 1033

Non-individuals

Same as for escrows closing on or before December 31, 2002

Waivers and reduced withholding

Individuals

There is no waiver process for individuals. The full amount of withholding is required unless the sellers can certify that they meet one of the exceptions or the buyer agrees to withhold on each payment of an installment sale.

Non-individuals

Same as for escrows closing on or before December 31, 2002.

Multiple sellers

Individuals

For individual sellers, withhold according to the seller's interest in the property.

Non-individuals

Same as for escrows closing on or before December 31, 2002

Loss on sale

Individuals

There is no withholding on individual sellers if they can certify that the sale will result in a loss. The law no longer allows individuals to request a withholding waiver.

Non-individuals

Same as for escrows closing on or before December 31, 2002

Small gain

Individuals

Full withholding is required unless the individual has a loss on the sale for California income tax purposes. The Franchise Tax Board cannot allow reduced withholding for individual sellers.

Non-individuals

Same as for escrows closing on or before December 31, 2002

Exchanges

Individuals

Individuals can certify that the sale is part of an Internal Revenue Code Section 1031 exchange and

- 1 if it is a simultaneous exchange, only the proceeds (boot) going to the seller will be withheld upon in escrow, or
- 2 if it is a deferred exchange, the proceeds will go to an intermediary who will withhold, if necessary.

Non-individuals

Non-individuals must still request a waiver from us to eliminate or reduce withholding in escrow.

Due dates

Same as for escrows closing on or before December 31, 2002

Forms

- Form 597, *Real Estate Withholding Tax Statement* (Used to report withholding on all individuals and non-individuals.)
 - Form 593-C, *Real Estate Withholding Exemption Certificate for Individual Sellers* (Used by individual sellers when they can certify that they meet one of the exceptions.)
 - Form 593-I, *Real Estate Withholding Installment Sale Agreement* (Used by buyers when the seller is an individual and the buyer wants to withhold on each payment instead of withholding the full amount at the time of sale.)
 - Form 593-L, *Real Estate Withholding - Computation of Gain or Loss* (Used by individual sellers to compute the gain or loss on the sale.)
 - Form 593-W, *Real Estate Withholding Exemption Certificate and Waiver Request for Non-individual Sellers* (Used by non-individual sellers to certify that they meet one of the exceptions or to request a waiver or reduced amount of withholding when there will be little or no gain.)
 - *Note: Only the 2002 revision of Form 597 and new Forms 593-C, 593-L, 593-I and 593-W can be used for sales closing on or after January 1, 2003.*
- Forms 597-E, 597-I, and 597-W may not be used.***

